

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HERBERT L. JOSEPH, II,

*Plaintiff,*

v.

PLANET FITNESS ASSET CO. LLC *doing*  
*business as* PLANET FITNESS,

*Defendant.*

Civil Action No. 2:21-cv-25

Hon. William S. Stickman IV  
Hon. Lisa Pupo Lenihan

**ORDER OF COURT**

*Pro se* Plaintiff Herbert L. Joseph, II claims Defendant violated his civil rights pursuant to 42 U.S.C. § 1983. (ECF No. 6). Magistrate Judge Lisa Pupo Lenihan issued a Report and Recommendation on February 17, 2021, recommending that the Court dismiss the action pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted without prejudice for the filing of a Second Amended Complaint to state a claim pursuant to 42 U.S.C. § 1981. (ECF No. 7). Plaintiff filed a document entitled “Objections to Report & Recommendation Third Amended Complaint.” (ECF No. 8). Notably, he continues to seek relief under § 1983. (ECF No. 8).

After its independent *de novo* review of the record and consideration of the pleadings, the Court hereby ADOPTS Magistrate Judge Lenihan’s Report and Recommendation as its Opinion. The Court overrules Plaintiff’s objections. Defendant is not a state actor. It is a private corporation, and therefore, relief against Defendant is not possible under § 1983 as set forth by Magistrate Judge Lenihan in her Report and Recommendation. Plaintiff will be provided the opportunity to file a Second Amended Complaint that sets forth a claim under § 1981 - that

Plaintiff was a member of a racial minority, that there was an intent to discriminate on the basis of race by Defendant, and that discrimination concerned one or more of the activities enumerated in § 1981.

AND NOW, this 15 day of March 2021, is it is HEREBY ORDERED that this action be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. Plaintiff has thirty (30) days to file a Second Amended Complaint.

BY THE COURT:

  
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WILLIAM S. STICKMAN IV  
UNITED STATES DISTRICT JUDGE